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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

**ALLIANCE FOR THE WILD
ROCKIES,**

Plaintiff,

v.

U.S. FISH & WILDLIFE SERVICE, an
agency within the U.S. Department of
Interior.

Defendant.

CV-

**COMPLAINT FOR
DECLARATORY and
INJUNCTIVE RELIEF**

Freedom of Information Act

I. INTRODUCTION

1. Plaintiff Alliance for the Wild Rockies (Alliance) brings this action under the Freedom of Information Act, 5 U.S.C. §§ 552 et seq. (FOIA) for declaratory, injunctive and other appropriate relief to enjoin Defendant from withholding requested documents and require that Defendant produce those documents.
2. Defendant violated the FOIA by failing to respond to Plaintiff's FOIA request with a determination within the deadline established by the FOIA, as well as by failing to produce requested documents. This action seeks the following: (1) an order declaring that Defendant acted illegally by failing to respond with a determination to Plaintiff's FOIA request; (2) an order declaring that Defendant acted illegally by failing to produce the requested documents; (3) an order enjoining Defendant from withholding the requested documents and requiring Defendant to produce the requested documents; and (4) an order requiring Defendant to pay the expenses of this action, including Plaintiff's costs and reasonable attorney fees.

II. JURISDICTION AND VENUE

3. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This Court

also has jurisdiction over this action pursuant to 28 U.S.C. § 1331(a) (federal question).

4. Venue in this District is proper under 5 U.S.C. § 552(a)(4)(B) because “the complainant resides” in this District.
5. Declaratory relief is appropriate under 28 U.S.C. § 2201. Injunctive relief is appropriate under 28 U.S.C. § 2202 and 5 U.S.C. 552(a)(4)(B).
6. This Court has the authority to award costs and attorneys’ fees under 5 U.S.C. § 552(a)(4)(E).

III. PARTIES

7. Plaintiff ALLIANCE FOR THE WILD ROCKIES (Alliance) is a tax-exempt, non-profit public interest organization dedicated to the protection and preservation of the native biodiversity of the Northern Rockies Bioregion, its native plant, fish, and animal life, and its naturally functioning ecosystems. Its registered office is located in Missoula, Montana. Members of the Alliance observe, enjoy, and appreciate Montana’s native wildlife, water quality, and terrestrial habitat quality, and expect to continue to do so in the future. Alliance’s members’ interests are directly affected by Defendant’s failure to respond to requests for, and disclose, information regarding wildlife management.

8. Defendant U.S. FISH & WILDLIFE SERVICE (FWS or Defendant) is an agency of the United States Department of Interior. FWS is the agency in possession and control of the records sought by Plaintiff, and as such, is subject to FOIA pursuant to 5 U.S.C. § 552(e). FWS has a statutory duty to respond to Plaintiff's information requests, and disclose the requested records. 5 U.S.C. § 552 (a)(6)(A).

IV. FACTUAL AND LEGAL BACKGROUND

9. On January 24, 2019, Plaintiff sent a FOIA request to Defendant via email to the following email addresses: (1) **fw6_foia@fws.gov**, (2) **fwhq_foia@fws.gov**, and (3) **jodi_bush@fws.gov**. *See* Exhibit 1 (FOIA Request).

10. Plaintiff's FOIA request states in part:

January 24, 2019

Stacey Cummins
FOIA Coordinator
U.S. Fish and Wildlife Service
P.O. Box 25486
Denver, CO 80225
Phone: 303-236-4473 / Fax: 303-236-7980
Email: fw6_foia@fws.gov

Carrie Hyde-Michaels
FWS FOIA Officer
U.S. Fish and Wildlife Service

5275 Leesburg Pike MS:IRTM
Falls Church, VA 22041
Phone: 703-358-2291 /Fax: 703-358-2251
Email address: fwhq_foia@fws.gov

Jodi Bush
Montana Field Supervisor
U.S. Fish & Wildlife Service
Ecological Services
Montana Field Office
585 Shepard Way, Suite 1
Helena, MT 59601
(406) 449-5225
jodi_bush@fws.gov

Dear Ms. Cummins, Ms. Hyde-Michaels, and Ms. Bush;

Pursuant to the federal Freedom of Information Act (5 U.S.C. 552 et. seq.), the Alliance the Wild Rockies, Inc. is filing this request for information. The Alliance for the Wild Rockies is a 501(c) (3) non-profit, public interest, public education organization.

I would like an electronic copy of the following:

1. Litchford and Hawkes Ditch Bill Easement Project Biological Opinion & Incidental Take Statement;
2. All biological assessments, biological evaluations, monitoring, reports, and correspondence regarding (1) above;
3. Big Flat and Frenchtown Irrigation Diversions Biological Opinion & Incidental Take Statement;
4. All biological assessments, biological evaluations, monitoring, reports, and correspondence regarding (3) above;
5. Saint Mary Diversion Biological Opinion & Incidental Take Statement;

6. All biological assessments, biological evaluations, monitoring, reports, and correspondence regarding (5) above;
7. Daly Ditch Irrigation Districts Hedge Diversion Replacement Project Biological Opinion & Incidental Take Statement;
8. All biological assessments, biological evaluations, monitoring, reports, and correspondence regarding (7) above;
9. Flint Creek Water Project East Fork of Rock Creek Biological Opinion & Incidental Take Statement;
10. All biological assessments, biological evaluations, monitoring, reports, and correspondence regarding (9) above.
11. On January 28, 2019, the FWS Region 6 FOIA Coordinator in Denver provided Plaintiff with a tracking number for this FOIA request:

FWS-2019-00323. Exhibit 2.
12. On January 31, 2019, the FWS Region 6 FOIA Coordinator in Denver provided Plaintiff with a letter that states in relevant part: “Because we will need to search for and collect requested records from field facilities or other establishments that are separate from the office processing the request, we are taking a 10-workday extension under 43 C.F.R. § 2.19. We therefore expect that we will dispatch a determination to you by March 11, 2019.”

Exhibit 3.
13. FWS did not provide a determination to Plaintiff by March 11, 2019.

14. FOIA requires that an agency determine whether to comply with a request for documents within 20 days of receipt of the request, excluding holidays and weekends. If the agency determines not to disclose documents to a requester, it must inform the requester of its decision and inform the requester, at that time, how to appeal the agency's decision. 5 U.S.C. § 552((a)(6)(A)(I).
15. The statutory deadline for Defendant to respond with a determination for the FOIA request in this case, i.e. 20 days from receipt of the request, excluding holidays and weekends, was February 22, 2019.
16. Defendant did not respond with a determination by February 22, 2019.
17. The FOIA allows 10 additional days, excluding holidays and weekends, for a determination if the component of the agency that receives the FOIA request is not "the appropriate component of the agency," and must forward the request to the appropriate component of the agency.
18. This 10-day extension exception does not apply in this case because the request was sent to the national office, regional office, and Montana field office, all on January 24, 2019.
19. Nonetheless, even if the 10-day extension exception applies, the deadline for Defendant's determination to Plaintiff's FOIA request was March 8, 2019.

20. Defendant did not respond with a determination by March 8, 2019.
21. As of the date of the filing of this Complaint – May 1, 2019 – Plaintiff has not received a determination on its FOIA request.
22. Plaintiff is directly and adversely affected by Defendant’s failure to provide a determination and responsive records for its FOIA request.
23. Plaintiff is “deemed to have exhausted [its] administrative remedies” because Defendants “fail[ed] to comply with the applicable time limit provisions” of the FOIA. 5 U.S.C. § 552(a)(6)(C)(I).
24. Plaintiff has been required to expend costs and retain legal representation to prosecute this action.

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Defendant violated FOIA by failing to issue a determination for Plaintiff’s FOIA Request by the statutory deadline.

25. Plaintiff incorporates all previous paragraphs by reference.
26. Defendant violated FOIA’s requirement that an administrative agency must respond to a FOIA request within 20 days, excluding holidays and weekends, with a substantive determination that notifies the requester whether the agency will comply with the request, the scope of the documents

the agency will produce, whether any exemptions are being claimed to deny any part of the request, and how to appeal an adverse determination. 5

U.S.C. § 552(a)(6)(A)(I).

27. Additionally, if the 10-day extension applies, Defendants have also violated that deadline.
28. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

SECOND CLAIM FOR RELIEF

Defendant violated FOIA by failing to make requested
records promptly available to Plaintiff.

29. Plaintiff incorporates all previous paragraphs by reference.
30. Defendant violated FOIA because its failure to provide the documents requested by Plaintiff violated the FOIA requirement that every administrative agency “make the records promptly available to any person” who requests records from an administrative agency. 5 U.S.C. § 552(a)(3)(A).
31. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

VI. REQUEST FOR RELIEF

THEREFORE, Plaintiff requests that this Court enter judgment providing the following relief:

- A. Declare that Defendant violated FOIA by failing to issue a determination for Plaintiff's FOIA request in accordance with the statutory deadline;
- B. Declare that Defendant violated FOIA by failing to promptly produce the documents requested in Plaintiff's FOIA request;
- C. Order Defendant to provide the requested records to Plaintiff or indicate, in a formal determination, that no such records exist;
- D. Award Plaintiff its reasonable costs, litigation expenses and attorneys' fees as provided by 5 U.S.C. § 552(a)(4)(E); and
- E. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted this 1st Day of May, 2019.

/s/ Rebecca K. Smith

Rebecca K. Smith

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Timothy M. Bechtold

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Attorneys for Plaintiff